

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

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MCKESSON AUTOMATION, INC., )  
Plaintiff, )  
v. ) C.A. No. 06-028-MPT  
TRANSLOGIC CORPORATION and )  
SWISSLOG ITALIA S.p.A., )  
Defendants. )

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**PLAINTIFF MCKESSON AUTOMATION, INC.'S  
NOTICE OF SERVICE OF SUBPOENA TO IAN BLUM, ESQUIRE**

PLEASE TAKE NOTICE THAT, pursuant to Rule 45 of the Federal Rules of Civil Procedure, on March 6, 2008 Plaintiff McKesson Automation, Inc. served a subpoena in the form attached upon Ian Blum, Esquire, with a deposition date of April 17, 2008.

Dated: March 11, 2008

BLANK ROME LLP

  
\_\_\_\_\_  
Dale R. Dubé (#2863)  
1201 Market Street, Suite 800  
Wilmington, DE 19801  
Tel: (302) 425-6472  
Fax: (302) 425-6464

Blair M. Jacobs  
Robert A. Gutkin  
Christina A. Ondrick  
SUTHERLAND ASBILL & BRENNAN LLP  
1275 Pennsylvania Avenue, NW  
Washington, DC 20004  
Tel: (202) 383-0100  
Fax: (202) 637-3593

*Counsel for Plaintiff*  
McKesson Automation, Inc.

**CERTIFICATE OF SERVICE**

I hereby certify that on this 11<sup>th</sup> day of March, 2008, I served by hand delivery and electronic filing PLAINTIFF MCKESSON AUTOMATION, INC.'S NOTICE OF SERVICE OF SUBPOENA TO IAN BLUM, ESQUIRE, using CM/ECF which will send notification of such filing to the following:

Julia Heaney, Esquire  
MORRIS, NICHOLS ARSHT & TUNNELL  
1201 N. Market Street  
P.O. Box 1347  
Wilmington, DE 19899

I also certify that, on this 11<sup>th</sup> day of March, 2008, I served the aforementioned document, by e-mail and First Class Mail, upon the following participants:

Lawrence C. Drucker, Esquire  
Alfred R. Fabricant, Esquire  
Richard LaCava, Esquire  
Bryan N. DeMattio, Esquire  
DICKSTEIN SHAPIRO LLP  
1177 Avenue of the Americas  
New York, NY 10036

*Dale R. Dubé*  
\_\_\_\_\_  
Dale R. Dubé

SAU88 (Rev. 12/06) Subpoena in a Civil Case

**Issued by the  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

McKesson Automation, Inc.

V.

**SUBPOENA IN A CIVIL CASE**

Translogic Corporation &amp; Swislog Italia, S.p.A.

Case Number:<sup>1</sup> 06-028-SLR**TO:**

Ian Blum, Esq.  
20 Stanton Circle  
New Rochelle, NY 10804

- YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME

- YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	DATE AND TIME
Sutherland, Asbill, & Brennan LLP 1114 Avenue of the Americas, 40th Flr., New York, NY 10036	4/17/2008 1:00 pm

- YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

PLACE	DATE AND TIME
Sutherland, Asbill, & Brennan LLP 1114 Avenue of the Americas, 40th Flr., New York, NY 10036	4/10/2008 5:00 pm

- YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(h)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)	DATE
<i>Christina Ondrick, attorney for plaintiff</i>	4-26-08

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER

Christina Ondrick, Esq.  
Sutherland, Asbill, & Brennan LLP - 1275 Pennsylvania Ave. N.W., Washington, DC 20004 202-383-0100

(See Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), on next page)

<sup>1</sup> If action is pending in district other than district of issuance, state district under case number.

03/10/2008 14:52 CAPITOL PROCESS SERVICES → 6373593

NO. 262 D02

AOR8 (Rev. 12/06) Subpoena in a Civil CasePROOF OF SERVICE

SERVED	DATE	PLACE
	3/5/08 @ 9:46 pm	20 Stanton Circle New Rochelle, NY 10804
SERVED ON (PRINT NAME)	MANNER OF SERVICE	
Ian Blum	Personal	
SERVED BY (PRINT NAME)	TITLE	
Albert Baldassarri	Process Server	

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

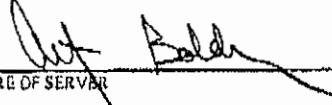
Executed on

3/6/08

DATE

SIGNATURE OF SERVER

ADDRESS OF SERVER

  
 Capitol Process Services, Inc.  
 1827 18th Street, NW  
 Washington, DC 20009
**Rule 45. Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), as amended on December 1, 2006:**

## (c) PRACTICE OR PERSONAL SERVICE TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, fees, expenses and a reasonable attorney's fee.

(2) (A) A person commanded to produce, permit inspection, copying, testing, or sampling of designated electronically stored information, books, papers, documents or tangible things, or destruction of premises need not appear in person at the place of production or inspection unless summoned to appear for deposition, hearing or trial.

(B) Except as specified in paragraph (d)(2) of this rule, a person commanded to produce and permit inspection, copying, testing, or sampling may, within 14 days after service of the subpoena or before the time specified for compliance (if such time is less than 14 days after service, serve upon the party or attorney designating it the subpoena a written objection to producing any or all of the designated materials or inspection of the premises) — and producing electronically stored information in the form or forms specified — if the objecting party is unable to do so without undue difficulty, furnish to the person serving the subpoena a copy of the subpoena or, if the subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which the person ordinarily maintains it or in a form or forms that are reasonably suitable.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) If a subpoena does not specify the form or form for producing electronically stored information, a person responding to a subpoena must produce the information in a form or form in which the person ordinarily maintains it or in a form or forms that are reasonably suitable.

(E) A person responding to a subpoena need not produce discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery of such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(F) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial-preparation material, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(G) If information is withheld in response to a subpoena that is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party may promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A responding party may promptly return the information to the court under seal for a determination of the claim. If the responding party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

(H) Failure of any person who has a adequate excuse to obey a subpoena served within this person may be deemed a contempt of the court from which the subpoena issued. An adequate cause for failure to obey exists when a subpoena requires a company to search or produce at a place not within the limits provided by clause (iii) of subparagraph (c)(3)(A).

**SCHEDULE A**

**DEFINITIONS AND INSTRUCTIONS**

1. "Translogic" shall mean (a) Translogic Corporation, (b) any of its divisions, departments, and other organizational or operating units, (c) all predecessor or successor companies or corporations, (d) all companies, corporations, partnerships, associations, or other business entities which are or have been under common ownership or control or affiliated, in any manner, with Translogic Corporation or its affiliated companies and (e) each of the present and former officers, directors, employees, agents, attorneys, or other representatives of Translogic Corporation.

2. "Swisslog Italia" shall mean (a) Swisslog Italia S.p.A., (b) any of its divisions, departments, and other organizational or operating units, (c) all predecessor or successor companies or corporations, (d) all companies, corporations, partnerships, associations, or other business entities which are or have been under common ownership or control or affiliated, in any manner, with Swisslog Italia S.p.A. or its affiliated companies and (e) each of the present and former officers, directors, employees, agents, attorneys, or other representatives of Swisslog Italia S.p.A.

3. "Swisslog Group" shall mean (a) Translogic, Swisslog Italia, Swisslog Holding AG, Swisslog Management AG, Swisslog AG, the entities identified on page 36 of Swisslog's 2005 Financial Report, and the entities identified on page 28 of Swisslog's 2005 Annual Report, (b) any of their divisions, departments, and other organizational or operating units, (c) all predecessor or successor companies or corporations, (d) all companies, corporations, partnerships, associations, or other business entities which are or have been under common ownership or control or affiliated, in any manner, with such entities or their affiliated companies,

(e) each of the present and former officers, directors, employees, agents, attorneys, or other representatives of such entities.

4. "McKesson" means McKesson Automation, Inc. and all partnerships, joint ventures, predecessors and successors and assigns of or involving each of the forgoing, including Automated Healthcare, Inc., and all past or present directors, officers, employees, agents, consultants, independent contractors, representatives, subcontractors and attorneys of such persons or entities.

5. "Provvisionato & Co." means Provvisionato & Co. including without limitation all of its locations; all of its predecessors, successors, joint-ventures, partnerships, affiliates and assigns; all past or present partners, principals, members, directors, officers, shareholders, attorneys, agents, representatives, employees, consultants, independent contractors, representatives, and subcontractors (including without limitation Andrea Balsamo); and others acting on behalf of Provvisionato & Co.

6. "Dickstein Shapiro LLP" means Dickstein Shapiro LLP including without limitation all of its locations; all of its predecessors, successors, joint-ventures, partnerships, affiliates and assigns (including without limitation Dickstein Shapiro Morin & Oshinsky LLP); all past or present partners, principals, members, directors, officers, shareholders, attorneys, agents, representatives, employees, consultants, independent contractors, representatives, and subcontractors (including without limitation Alfred Fabricant and Steven Weisburd); and others acting on behalf of Dickstein Shapiro LLP.

7. "February 13, 2002 Opinion" means the letter regarding the Automated Healthcare Inc. Patent Documents-Analysis of the Risk of Interference with the Modular Pin Store by Swisslog Italia dated February 13, 2002 (including any attachment thereto) and signed

by Andrea Balsamo that Translogic produced at T056868-70 (English version) and T056859-67 (Italian version).

8. "January 17, 2006 Opinion" means the letter regarding the Investigation Concerning Automated Healthcare'[s] Patents US 5,468,110 and US 5,593,267 dated January 17, 2006 and signed by Andrea Balsamo (including any attachment thereto) that Translogic produced at T056855-58.

9. "January 26, 2006 Opinion" means the oral communication between Messrs. Alfred Fabricant, Larry Drucker, and Richard LaCava of Dickstein Shapiro and Messrs. Remo Brunschwiler, Martin Strobel and Charles Kegley, among others, described in Translogic production Bates No. T056875-77.

10. "March 16, 2006 Opinion" means the letter regarding the current status of the suit and risk assessment regarding potential material claims dated March 16, 2006 and signed by Dickstein Shapiro Morin & Oshinsky LLP (including any attachment thereto) that Translogic produced at T056851-54.

11. "February 28, 2007 Opinion" means the Infringement Investigation of U.S. Patent Nos. 5,468,110 and 5,593,267 dated February 28, 2007 and signed by Steven Weisburd (including any attachment thereto) that Translogic produced at T056173-850.

12. "Opinions of Counsel" means, individually and collectively, the February 13, 2002 Opinion, January 17, 2006 Opinion, January 26, 2006 Opinion, March 16, 2006 Opinion, February 28, 2007 Opinion, and any other opinion that any of Defendants are relying on as a defense to willful infringement.

13. "Opinions of Provisionato Counsel" means, individually and collectively, the February 13, 2002 Opinion and January 17, 2006 Opinion.

14. "Opinions of Dickstein Shapiro Counsel" means, individually and collectively, the January 26, 2006 Opinion, March 16, 2006 Opinion and February 28, 2007 Opinion.

15. "Automated storage system" means automated storage and retrieval systems, which are automated, robotic systems for sorting, storing, and retrieving items.

16. The term "PillPick System" means any of the Swisslog Italia/Translogic automated drug management and/or storage systems for pharmacies and all versions, components, or prototypes thereof including, but not limited to, BoxStation, AutoBox, Box Picker, PillPicker, AutoPhial, PhialBox, DrugNest, FillBox, PickReturn, PickRing and any other component, product or system used in conjunction with the aforementioned products or systems as part of an automated drug management or storage system. PillPick includes, but is not limited to, the products, systems and components identified on the Swisslog website at, for example, <http://www.swisslog.com/internet/hcs/hcs/adms/05.pdf> and <http://www.swisslog.com/hcs-index/hcs-systems/hcs-pharmacy/hcs-pharmacycomponents.htm>. Further, as used herein, PillPick System is meant to include any combination of products, systems or components that can form a PillPick System.

17. "Patents-in-suit" means any one or more of U.S. Patent Nos. 5,468,110 and 5,593,267.

18. "Person" or "persons" means any natural person, any firm, any organization or business entity, whether individual or proprietorship, joint venture, partnership, corporation, association or otherwise, or any governmental entity or any agent, department, bureau or other legal subdivision thereof.

19. "Document" has the full meaning ascribed to it in Rule 34 of the Federal Rules of Civil Procedure, and includes the original, and every copy which differs in any way from the

original, of any written, recorded, or graphic matter in any and all media however produced or reproduced, including papers, films, magnetic tapes or storage devices, ROMs, EPROMs, and all other methods for the expression or retention of information.

20. "Communication" means any contact between or among two or more persons and shall include, without limitation, written contact by means such as letters, memoranda, telegrams, telecopies, telexes, email or any other document; the transmittal of information by any means; any oral contact such as face-to-face meetings or telephone conversations; and any writings memorializing such oral contact.

21. The words "and," "or" and "any" are intended to be construed as necessary to bring within the scope of these requests for production any information which otherwise might be construed to be outside of the scope of any of them.

22. The words "all" and "each" shall be construed as all and each.

23. The use of the singular form of any word includes the plural and vice versa.

24. As used herein, the word "relate" or the phrase "refer or relate to" and variants thereof are intended to mean referring to, pertaining to, concerning, regarding, having any relationship to, describing, evidencing, or constituting evidence of, in whole or in part, the referenced matter.

25. When referring to a person, "identify," "to identify" or "identification of" means to give, to the extent known, the person's full name, present or last known address, and when referring to a natural person, additionally, the present or last known place of employment.

**INSTRUCTIONS**

1. This subpoena calls for you to produce all documents that are known or available to you.
2. All documents that respond, in whole or in part, to any portion of this subpoena are to be produced in their entirety, without abbreviation or expurgation, including all attachments or other matters affixed thereto. To the extent these documents are maintained in both hard copy and electronic form, provide both forms.
3. All documents shall be produced either in the order and in the manner that they are kept in the usual course of business or shall be organized and labeled to correspond with the categories of this subpoena. Whenever a document or group of documents is removed from a file folder, binder, file drawer, file box, notebook, or other cover or container, a copy of the label or other means of identification of such cover or other container shall be attached to the document.
4. If any documents requested herein or fairly comprised within the scope of these requests have been lost, destroyed, or are otherwise no longer in your possession, custody or control, you shall provide in lieu of a true and correct copy thereof a list of such documents, together with the following information: (a) the date of origin; (b) a brief description of such document; (c) the author of the document; (d) the date upon which the document was lost or destroyed; (e) the identity of the person(s) presently in possession, custody or control of such documents; and (f) a brief statement of the manner in which the document was lost, destroyed, or otherwise disposed of and the reason therefor.
5. When a document requested by any of these requests for production is withheld from production on any ground, such as that of the attorney-client privilege or the work product

immunity doctrine, you shall furnish McKesson with a list identifying each such document by date, author(s) (including position and title of same), recipient(s) (including position and title of same), the general nature of the document; and identifying the subject matter with sufficient detail to enable the document to be referred to in any subsequent motion to compel production; and further the listing shall state the basis asserted for withholding the document in sufficient detail so as to enable the claim of privilege or immunity or other claim to be adjudicated.

6. If subsequent to the date you produce documents responsive to this subpoena you discover or receive documents that are responsive to the requests herein, promptly produce all such additional documents to the full extent required by the Federal Rules of Civil Procedure and the Local Rules of the District Court.

**DOCUMENTS TO BE PRODUCED**

1. All documents relating or referring to any of the Opinions of Counsel, including without limitation any drafts, versions or revisions of any of the Opinions of Dickstein Shapiro Counsel.
2. All correspondence or other documents exchanged between Dickstein Shapiro LLP and Translogic or Swisslog Italia relating to, referring to, or in connection with any of the Opinions of Counsel.
3. All correspondence or other documents exchanged between Dickstein Shapiro LLP and any other person or entity (including without limitation Provisionato & Co., Martin Strobel, Swisslog Holding AG, and Swisslog Management AG) relating to, referring to, or in connection with any of the Opinions of Counsel.
4. All communications (including without limitation any e-mails, correspondence, facsimiles, or memorialization of any communications) relating or referring to the Opinions of Counsel, including without limitation communications relating to the preparation, revision or timing of any of the Opinions of Counsel.
5. All documents and communications that relate to the same subject matter as any of the Opinions of Counsel.
6. All billing records relating to, referring to, or in connection with the Opinions of Counsel, including without limitation Dickstein Shapiro LLP's time entries, statements of work performed and invoices.
7. All documents sought, relied upon, or reviewed by Dickstein Shapiro LLP in connection with the preparation or revision of any of the Opinions of Counsel.

8. All correspondence or other documents exchanged between Dickstein Shapiro LLP and Translogic or Swisslog Italia relating or referring to documents sought, relied upon, or reviewed by Dickstein Shapiro LLP in connection with the preparation or revision of any of the Opinions of Counsel.

9. All correspondence or other documents exchanged between Dickstein Shapiro LLP and any other person or entity relating or referring to documents sought, relied upon, or reviewed by Dickstein Shapiro LLP in connection with the preparation or revision of any of the Opinions of Counsel.

10. All documents referring or relating to any document retention policy of Dickstein Shapiro LLP with respect to the retention of drafts or revisions of opinions of counsel authored or reviewed by Dickstein Shapiro LLP including without limitation, the Opinions of Dickstein Shapiro Counsel.

11. All documents referring or relating to any policy or rule of Dickstein Shapiro LLP with respect to the preparation and issuance of opinions of counsel relating to patent matters.